Statement of

Jacquelyn A. Bednarz
Special Assistant
Office of Examinations
Immigration and Naturalization Service
United States Department of Justice

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H.R. 1543 and H.R. 2172

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Mr. Chairman and Members of the Subcommittee:

On behalf of the Immigration and Naturalization Service (INS), I am pleased to provide our views relating to H. R. 1543, by Mr. Dellums, and H.R. 2172 , by Mr. Frank. Both of these bills would amend section 214(l) of the Immigration and Nationality Act (INA) by allowing certain exceptions to the restrictions, adopted in 1996, which apply to the conditions under which alien students can attend public schools in the United States. These bills have arisen out of certain unique circumstances and individual hardships which we believe were not anticipated by the U. S. Congress when it passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).

The INS understands that the intent of these two bills is to address the desire for more flexibility under section 214(l), provided that the U.S. taxpayers are not responsible for subsidizing the cost of nonimmigrant students. Although these amendments would provide relief for some students, the INS believes that other meritorious situations would not be covered by these bills. We believe that the circumstances giving rise to these two bills, and other cases which have come to our attention, will be best dealt with by a general statutory exception to section 214(l).

To explain, I believe we should briefly review the history of the passage of Section 214(l) and the events which have transpired since its passage in 1996.

History of Section 214(l)

Section 625 of the IIRIRA amended the Immigration and Nationality Act (INA) by adding a new subsection (l) to section 214. The new 214(l) provision prohibits the classification of an alien as a foreign student under section 101(a)(15)(F)(i) of the INA if the alien seeks to attend public elementary school or publicly-funded adult education programs or to attend public secondary school without reimbursing the school system for the total, unsubsidized costs of education. The provision also limits attendance at a public secondary school to one year and prohibits transfer from a private secondary school to a public secondary school unless the reimbursement condition and one year limitation are applied. As we understand it, Congress' intent was two-fold: (1) To put an end to the practice of F-1 nonimmigrant students who entered or obtained status to attend private elementary, secondary or Intensive English Program (IEP) schools, transferring (or parachuting) over to a public elementary/secondary school or IEP adult education program; and (2) to stop the practice that resulted in aliens who were admitted for, or changed status to, that of an F-1 student with the primary purpose of going to school in the U.S., from being subsidized by U.S. taxpayers through attendance at public schools and adult education programs.

Developments Since the Enactment of Section 214(l)

Section 214(l) went into effect on November 30, 1996, a time when many foreign students had departed from the United States to celebrate end of the year holidays with their families abroad. Upon return to the United States in January to resume their studies, many unaccompanied minor children and others were found no longer to be admissible as nonimmigrant students. Many of these children had personal effects in the United States at the residences where they were living during the first semester of the academic year. On a case-by-case basis, INS deferred inspection to enable such aliens to enroll in a service-approved private elementary school in order to be eligible for admission to F-1 status, considered parole of some of these aliens to allow them to complete the academic year, considered other appropriate visa classifications or allowed them to finalize their affairs in the United States.

Since enactment of the 214(l) provision, INS has learned of various situations which could not have been foreseen at the time the provision was drafted and debated. The following examples provide an illustration of some of the unintended consequences of the 214(l) provision:

Along the Alaska-Yukon and Alaska-British Columbia border there is often but one school serving remote communities on both sides of the border. After enactment of the 214(l) provision, Canadian students were no longer eligible to enter the United States to attend the local public elementary school even though the provincial government reimbursed the local school district in Alaska for the education costs of the Canadian students. In Michigan, INS learned of the predicament befalling foreign (Canadian) students attending a private school which could no longer afford to operate as a private institution. When the school changed hands in the middle of the academic year and fell under the jurisdiction of the local school system, the Canadian students were no longer eligible to commute to the United States daily to go to school. Although the childrens' local government combined with their families were willing to continue paying for their education, under the new statute, they were not able to be accorded F-1 status for purposes of attending a public elementary school. The INS granted parole to these ten students for the remainder of the 1996-97 school year, but the current law still requires that they no longer commute across the border when the 1997-98 school year begins in September.

There are many "Sister City" arrangements between American cities and cities in foreign countries. One component of the sister city arrangements is a valuable exchange program for high school students enabling American youth to spend a year in a foreign high school while a student from abroad is spending a year in one of our high schools. No tuition is exchanged under these sister city arrangements. The 214(l) provision requires that a foreign student reimburse the total, unsubsidized costs of a public secondary education for the academic school year.

Finally, INS has learned of some public schools' tuition-supported Adult Education Programs which aliens are no longer eligible to receive F-1 student visas to attend. Under the 214(l) provision, these tuition-supported programs are treated in the same manner as public Adult Education programs for which no tuition costs are reimbursed. To date, INS is acquainted with such programs in Utah and in Berkeley, California. INS continues to examine how these tuition-supported programs operate to determine whether adult students pay a fee for the direct costs only or both the direct and indirect costs of the adult education.

With regard to H.R. 1543 and H.R. 2172, the INS believes that there is a need to amend Section 214(l) to make allowances for exceptional circumstances which may arise which require special consideration. We believe, however, that instead of addressing each new circumstance with a new amendment to the statute, as with these two bills, it would be preferable to address all of these instances with one statutory change. We look forward to working with you and other interested parties, such as the Department of Education, to develop an appropriate solution.

Piecemeal solutions may also introduce new problem areas into the law. For example, H.R. 2172 would prohibit a school system from using federal funds to pay any cost associated with such enrollment. However, the question of whether federal funds are involved may not be easy to determine. For example, we are advised by the Department of Education that it administers programs under the Elementary and Secondary Education Act of 1965 under which federal grants are available for "school-wide" support of a school's entire instructional program. Attempting to sort out federal from non-federal expenditures for

particular students in these and other cases would pose a large, and largely fruitless, accounting and administrative burden on public schools that would not otherwise be necessary.

We appreciate the opportunity to testify before you on this issue, and welcome any questions.